


Memorandum

To : Mr. Stephen R. Rudd, Chief
Environmental Fees Division (MIC:57)

Date: August 13, 1997

From : Monica Gonzalez Brisbane 
Tax Counsel

Subject: **Limited Liability Companies**

ISSUE PRESENTED:

Your memorandum dated July 10, 1997 was assigned to me for reply. Specifically, you have requested a legal opinion regarding the applicability of the Environmental Fee imposed by Health & Safety Code § 25205.6¹ to Limited Liability Companies.

BRIEF CONCLUSION:

Based on the discussion below, it is my opinion that the fee imposed by § 25205.6 is not applicable to Limited Liability Companies.

DISCUSSION:

On September 30, 1994, California joined 45 other states and the District of Columbia and enacted legislation creating Limited Liability Companies. The remaining states have since enacted Limited Liability Company legislation. While there is not an abundance of case law involving Limited Liability Companies in California, what is clear is that a Limited Liability Company is essentially a hybrid of a corporation and a partnership. Therefore, depending on how the Limited Liability Company is organized, the Limited Liability Company can provide its members the limited liability enjoyed by corporate shareholders (although it does not have to) and the pass through tax advantages of a partnership, without the restrictions imposed on limited partnerships and S corporations. While Limited Liability Companies can have characteristics of corporations, they are not corporations. Limited Liability Companies are governed by a separate and distinct set of statutes found at Corporations Code §§ 17000 - 17705.

Given the separate statutory treatment, although corporations and Limited Liability Companies can share characteristics, a Limited Liability Company is a separate and distinct legal entity from a corporation, and should not be considered a "corporation" for purposes of the Environmental

¹ Unless otherwise indicated, all statutory references are to the Health & Safety Code.

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Fee. Presumably in recognition of this distinction, the Hazardous Substances Tax Law was amended to include in the definition of "person" a Limited Liability Company. However, Limited Liability Companies were not added to the Environmental Fee. Arguably, if the Legislature had wanted to include Limited Liability Companies to the Environmental Fee it could have.

Further, I was unable to locate any legislative history regarding why only "corporations" are required to pay the fee and not other entities. Arguably, if the reasoning was because of the legal liability protection afforded corporate shareholders, then an argument could be made that to the extent a Limited Liability Company is afforded that same protection it should be required to pay the fee imposed by § 25205.6. In my opinion this would not be a very strong argument and would undoubtedly be difficult to administer without looking at the Articles of Organization of each Limited Liability Company and determining if the legal liability protection was afforded to the Limited Liability Company's members.

In order for Limited Liability Companies to be liable for the Environmental Fee, the statute will need to be amended to reflect that the fee applies to Limited Liability Companies. In fact, as I am sure you are aware, SB 660 has been introduced and is, in part, seeking to impose the Environmental Fee on "business entities" which, although not specifically enumerated in the current version of the bill, could be read to include Limited Liability Companies. I understand Legal has recommended that the definition of "business entities" be improved, if possible to make the definition clearer. Ms. Judy Nelson is working with the Legislative Division on this issue. Please contact her at 324-2641 if you have any question regarding SB 660.

If you have any question, please contact me at 322-0438.

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LLC.mem

cc: Ms. Lynn Bartolo (MIC:57)
Mr. Dave McKillip (MIC:57)
Mr. Tony Munso (MIC:57)
Ms. Judi Santiago (MIC:57)
Ms. Janet Vining
Ms. Judith Nelson